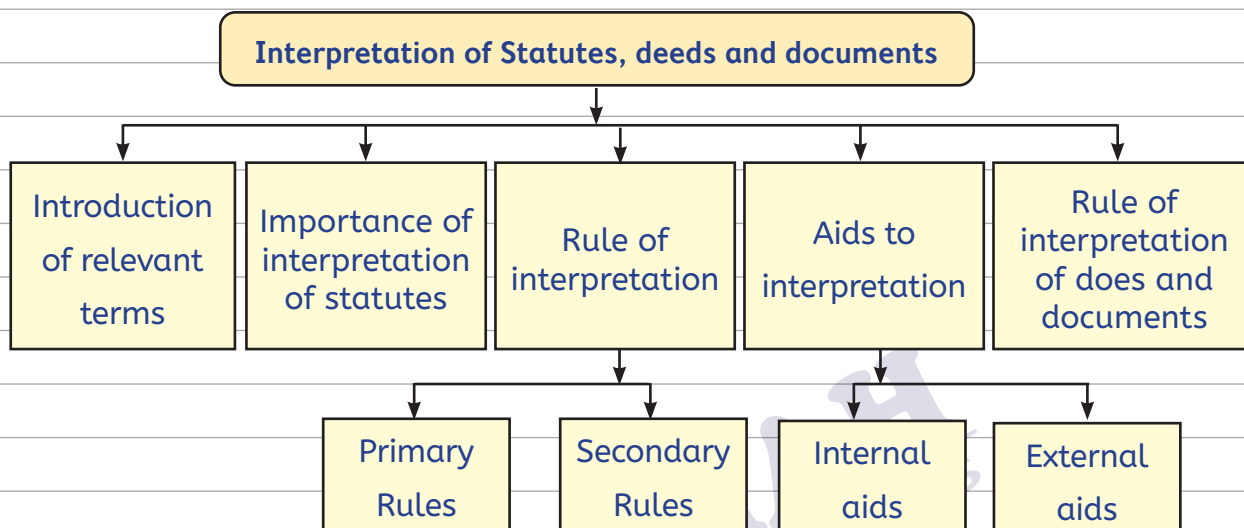


2

INTERPRETATION OF STATUTES



❖ **MEANING OF 'STATUTE':**

- **A statute has been defined as 'the written will of the legislature'.** A Statute is a law established by the act of legislative power, i.e., an Act of legislature.
- The Constitution of India does not use the term 'Statute' but it uses the term 'law', 'Law' includes any ordinance, order, bye-law, rule, regulations, notification, custom or usage having the force of law.

❖ **MEANING OF 'INTERPRETATION':**

- Interpretation is the process of ascertaining the true meaning of the words used in a Statute.
- When the language of a Statute is clear, there is no need for the rules of interpretation. But, in certain cases more than one meaning may be derived from the same word or sentence. It is therefore necessary to interpret the Statute to find out the real meaning of the statute.

❖ **DOCUMENT:**

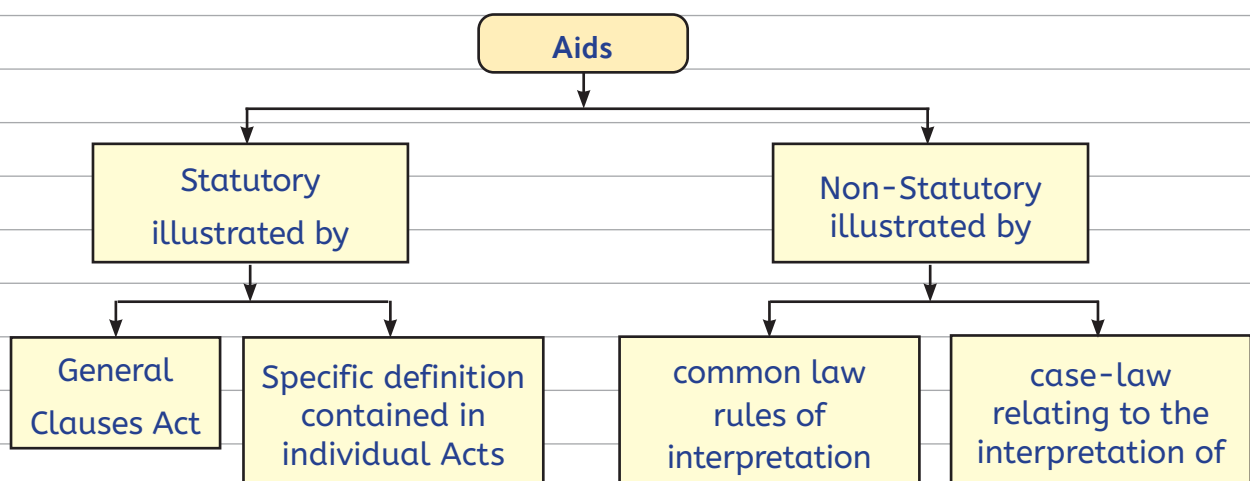
- Section 3 of the Indian Evidence Act, 1872 states that 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

- **Generally, documents comprise of following four elements:**
 - Matter** — This is the first element. Its usage with the word “any” shows that the definition of document is comprehensive.
 - Record** — This second element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.
 - Substance** — This is the third element on which a mental or intellectual elements comes to find a permanent form.
 - Means** — This represents forth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.

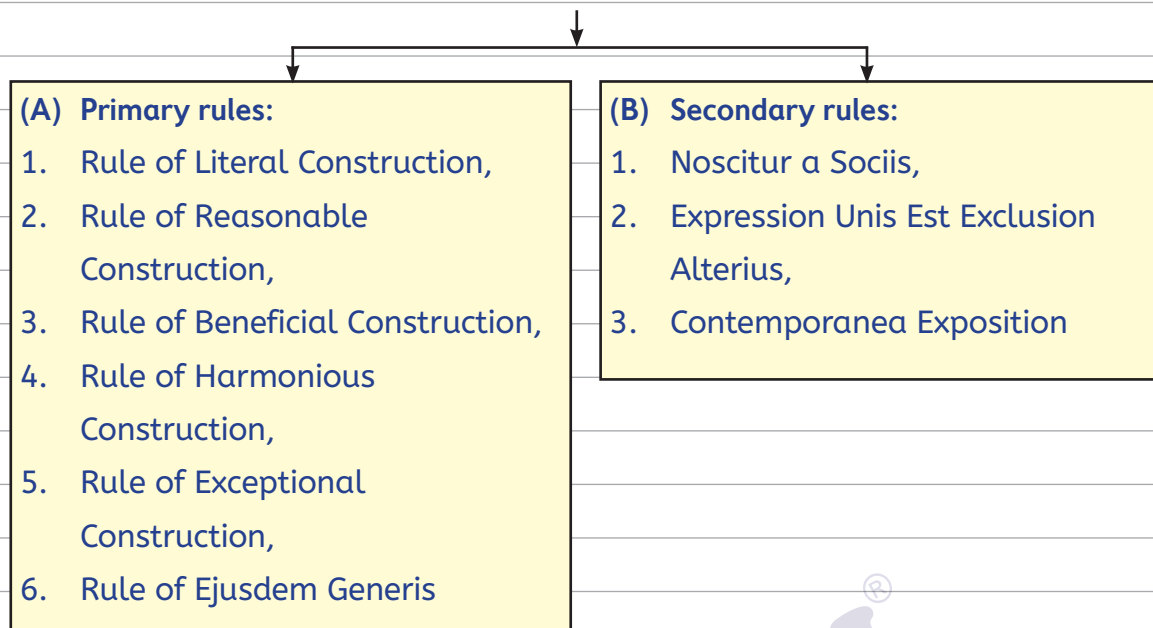
Interpretation differs from construction. Interpretation is of finding out the true sense of any form and the construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text.

Where the Court adheres to the plain meaning of the language used by the legislature, it would be ‘interpretation’ of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be resorting to what is called ‘construction’.

❖ **PROCESS OF INTERPRETATION:**



❖ **RULE OF INTERPRETATION:**



(A) PRIMARY RULES:

1. **Rule of Literal Construction / Grammatical Construction**

1. **Meaning of the word is clear:** Where the words are clear, the language is plain, and only one meaning can be derived, then the words should be followed literally. The rule is called as 'litera legis' i.e., literal construction of law.

The Court should adopt literal interpretation, unless the language is ambiguous, or literal sense would give rise to an anomaly or defeat the purpose of the Act.

2. **Grammatical meaning:** The language used in a Statute must be construed according to the rules of grammar unless the language is ambiguous or its literal sense gives rise to any anomaly.

3. **Ordinary meaning:** A Statute must be interpreted according to the clear words used. The words and sentences of a Statute must be given their ordinary and natural meaning.

4. **Technical meaning:** It is presumed that words and phrases in a technical legislation have a technical meaning and hence to be interpreted accordingly. However, if a word has no technical meaning, it is given the ordinary meaning.

5. **Trade meaning:** If a provision relates to a particular trade, the words used therein must be given that meaning which everybody conversant with that trade understands. Such meaning may differ from the ordinary or popular meaning.

6. **Implications of the rule**

(a) Every word to be given a meaning:

(b) Courts cannot legislate: If a matter has not been provided for in a Statute, it cannot be supplied by the Courts even if the Court finds that it should have been so provided.

(c) No reference to legal decisions: Literal construction involves arriving at the meaning of the words without reference to legal decision.

2. **Rule of Reasonable construction /Logical Construction**

1. **Narrow interpretation fails to achieve the purpose:** Where the words of a Statute appear to be prima facie clear and unambiguous, but on close scrutiny they may turn out to be deficient in carrying out the intention of the legislature, reasonable construction should be resorted.

2. **Giving effect to the intention of the legislature:** While interpreting a Statute, it is the duty of the Court to find out the intention of the Statute. It has to look into the circumstances, which prevailed at the time when the Statute was passed and which necessitated the passing of the Statute.

3. **Sensible meaning:** The words of a statute must be constructed so as to lead to a rational, fair and sensible meaning. Ordinarily, the words of a Statute are given their ordinary and natural meaning. However, if the words are ambiguous, an attempt must be made to discover the intent of the legislature.

3. **Haydon's Rule of Interpretation or "The Mischief Rule" or Rule of Beneficial Construction of this rule**

1. **Ambiguous words:** Haydon's Rule may be applied if the words used in a Statute are ambiguous and are capable of more than one meaning.

2. **Literal interpretation defeats the object of the Act:** If giving literal meaning to the words would defeat the object of the legislature, the Court may depart from the dictionary meaning and instead give it a meaning which will advance the remedy and suppress the mischief.
3. **Extended meaning is required:** If the object of a Statute is public safety, words can be given a more extended meaning as compared to their ordinary meaning to give effect to that object. Similarly, the words in a penal Statute can be given a more extended meaning in order to suppress the mischief.

Essence of the rule/Methodology

1. **Consideration of background of the statute:** The Court shall consider the historical background of the Statute, common law before the Statute was enacted and the mischief, which the Statute intended to remedy. In particular, the Court shall consider the following four matters:
 - (a) What was the law before making of the Act?
 - (b) What was the mischief or defect, which the law did not provide?
 - (c) What is the remedy that the Act has provided?
 - (d) What is the reason for the remedy?
2. **Suppress the mischief and advance the remedy:** After the Court has considered the above four matters, the rule requires the Court to adopt that construction which will suppress the mischief and advance the remedy.

4. Rule of Harmonious Construction:

Basis of the Rule:

When there is a conflict between two or more provisions, harmonious construction is to be adopted.

Essence of Harmonious Construction:

1. **Provisions to be reconciled:** Where two provisions relate to the same subject matter, these should be reconciled and effect must be given to both of them. Any inconsistency either within a section or between two different sections of a Statute must be avoided.
2. Act to be read as a whole

Harmonious construction - Methodology:

1. Harmonize the provisions:

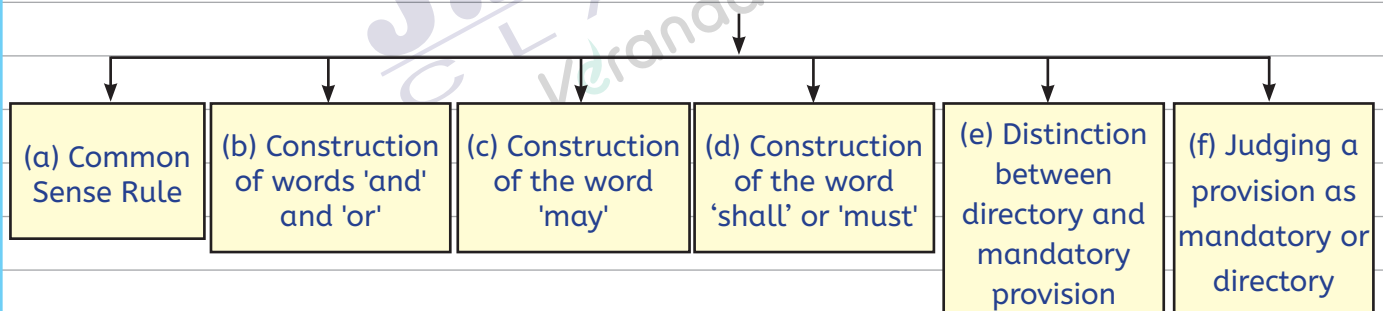
- (a) Any head-on clash between them should be avoided.
- (b) If it is not possible to harmonize the two conflicting provisions, they should be so interpreted that effect is given to all of them.
- (c) One section shall not be allowed to defeat the other provisions of the Act unless it is impossible to harmonize them or to give effect to all the provisions.

2. Course of action if it is impossible to harmonize: If it is impossible to harmonize the two conflicting provisions, the recourse shall be as follows:

- (a) The provision enacted or amended latter in point of time shall prevail.
- (b) The Court shall find out which provision is more general and which is more specific. The more specific provision shall be so construed as to exclude the more general provision.

5. Rule of Exceptional Construction

The rule of exceptional construction may be studied under the following heads:



(a) Common Sense Rule:

Full effect must be given to every word contained in a Statute. However, words in a Statute may be eliminated if no sensible meaning can be drawn.

(b) Construction of words 'and' and 'or':

The word 'and' is normally conjunctive, i.e., if two provisions are separated by the conjunction 'and,' requirements of both the provisions should be satisfied. If two clauses are separated by the word 'or,' satisfying the requirements of any of the two clauses would be sufficient.

(c) **Construction of the word 'may'**

Directory force: The word 'may' is generally construed to have a directory force only.

Mandatory force: The word 'may' has a mandatory force in the following cases:

- (a) Where the subject involves a discretion coupled with an obligation, i.e., when a power is given, there is duty to discharge the obligation.
- (b) Where a remedy will be advanced and mischief will be suppressed.
- (c) Where giving a directory significance to the word 'may' will defeat the very object of the Act or cause material danger to the public or result in denial of benefit to the public.

(d) **Construction of the word 'shall' or 'must'**

Mandatory force: The word 'shall' is ordinarily construed to have a mandatory force. Where a provision in the Statute provides for a specific penalty, the Court has no discretion to determine whether such provision is directory or mandatory. It is to be taken as mandatory provision.

Directory force: The word 'shall' has a directory force (a) where it has been used against the Government, unless a contrary intention is manifest in the Statute; or (b) where the intention of the legislature so demands; or (c) where giving it a mandatory interpretation would result in absurd results.

(e) **Judging a provision as mandatory or directory**

Whether a provision is a mere direction or a mandatory command depends upon the purpose of the Act, the intention of the legislature and general inconvenience to the public. Following generalizations may be drawn:

- (a) Prohibitory provisions (i.e., use of negative,, words in a provision) imply that the provision is mandatory.
- (b) If the non-compliance of a provision results in penalty, it implies mandatory intention of the Statute.
- (c) If a provision gives a power coupled with a duty, it is mandatory in nature.
- (d) If no public policy is involved, the procedure is treated only as directory.
- (e) Provisions enacted to prevent fraud and mischief is held as mandatory.

6. Rule of Ejusdem Generis

Applicability of the Rule:

For application of the rule, all the following conditions need to be satisfied:

- (a) There must be an enumeration of certain specific words.
- (b) The specific words contained in the enumeration must constitute a class or category.
- (c) The specific words must be of the same kind or nature.
- (d) The specific words must not exhaust the whole category.

Meaning of the rule

1. The term 'Ejusdem Generis' means of the same class or species.'
2. The rule states that general words following specific words are to be construed with reference to the words preceding them.
3. Where a Statute uses the words 'such as oxen, bulls, goat, cows, buffaloes, sheep, horses, etc.', the word 'etc' cannot include wild animals like lion and tiger. Also, all domestic animals would not be covered. The illustrations given relate to all four legged animals and hence other domestic animals like dogs, cats etc. can be included but not cock or hen has no similarity with the illustrations of other domestic animals given

(B) SECONDARY RULES:

1. Expression Unius Est Exclusio Alterius

- (a) The maxim means that express mention of one thing implies the exclusion of another.
- (b) As per this maxim, if two or more things belonging to a particular class are mentioned, other members of that class are silently excluded.

Examples:

Where a Statute refers to 'lands, house and coal mines, other mines except coal mine are excluded and 'other mines' cannot be made to fall within the general term 'lands.'

2. Noscitur A Sociis (Construction of associated words)

- (a) The meaning of a word is derived from its associate words, i.e., the meaning of a word is to be judged by the company it keeps. The words in a Statute are construed with reference to the words found in immediate connection with them.

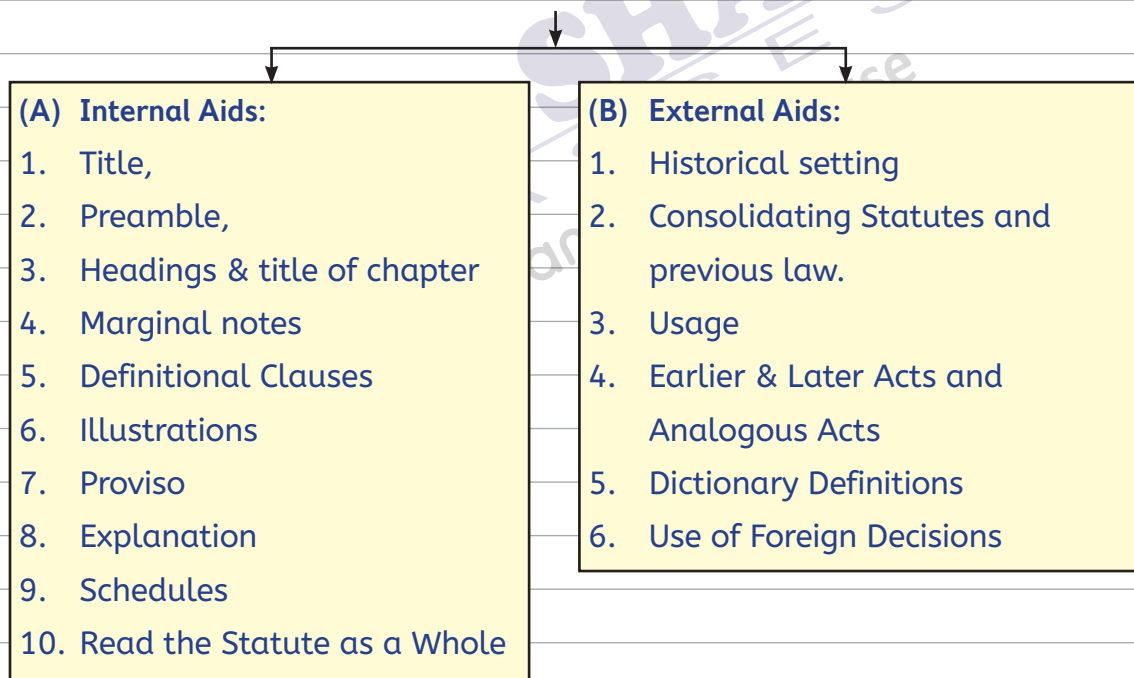
(b) If two or more words which are capable of analogous (similar or parallel) meaning are grouped together, they should be understood in cognate sense, i.e., they take their colour from each other and are given a similar or related meaning.

3. Contemporanea Exposition

Usage in the past: The maxim 'Contemporanea Expositio' means interpreting a Statute by reference to the exposition it has received from contemporary authority. Where the language is ambiguous, the Court shall pay due regard to the interpretation that the language of the Act has received over a long period of time.

Expose the old laws to new circumstances and technology.

❖ AIDS OF INTERPRETATION



(A) INTERNAL AIDS OF INTERPRETATION:

(1) Title

1. The purpose of short title is to identify the enactment and not to describe it.

Short title is not used for interpreting the Statute.

2. The long title is a part of the Act and describes it..

(2) Preamble

1. The preamble expresses the (scope) and (object) of the Act. It is a part of the Act. It state the reasons for creation of the Act and the evil which it wants to suppress.
2. If the wording of a Statute is ambiguous, the preamble can and ought to be referred to ascertain the object and scope of the Act, in order to arrive at the proper construction. It can explain and elucidate the enactment.

(3) Headings and title of a chapter

1. A number of sections covering a particular subject are grouped together in the form of a chapter. Each chapter is given a heading, which represents the subject matter dealt with the chapter.
2. The headings may be referred to for the purpose of construction of the enactment or its parts. However, headings cannot restrict the clear meaning of an enactment. Further, heading to one group of sections cannot be used to interpret another group of sections.
3. There is a controversy regarding the weightage to be given to headings while interpreting a Statute.

The position is as under:

- (a) According to one view, a heading is a preamble to the provisions following it and therefore the heading is treated as a key to interpretation of sections covered by it.
- (b) The other view considers that heading may be referred to only when the enacting words are ambiguous.

(4) Marginal notes

1. Generally, marginal notes are printed at the left hand margin of the sections in an enactment. But, Acts published by private publishers show the marginal notes at the top of the section. Marginal notes are essentially a heading/title to the section. Marginal notes summarize the effect of a section.
2. In India, the Courts have given different views regarding the use of marginal notes in construction of a Statute. Many Courts have held that marginal notes cannot be referred to for the purpose of constructing a Statute. However, certain Courts have held that marginal notes may be used to understand the legislative intent, if the words of a Statute are ambiguous.

(5) Definitional Clauses

Statutory definition

1. A definition clause performs the following two functions: (a) It acts as a key to proper interpretation and thus avoids ambiguities, (b) It shortens the language and avoids repetition.
2. Where the meaning of a word or expression is defined in a Statute, it is that meaning alone which must be given to it. The Court cannot ignore the statutory definition and speculate as to what should be the true meaning of the expression, unless there is anything repugnant in the context.
3. A word defined in the Act bears the same meaning throughout the Act.
4. Where a definition includes the words 'unless the context otherwise
5. Where the language used in the definition itself is ambiguous, the definition should be construed in the light of the purpose of the Act and having regard to the ordinary connotation of the word defined.

Exhaustive definition

1. When a word is defined to 'mean' something, the definition is prima facie restrictive and exhaustive & the meaning of such word must be restricted to the meaning given in the definitional clause.
2. Where a definition is in the form of 'mean and include' something, the definition is exhaustive and restrictive.

Inclusive definition

1. Where an expression is defined to 'include' something, the definition is prima facie extensive and its meaning can also include something else in addition to the meaning assigned to it in the definitional clause.
2. A definition in the form of 'is deemed to include' is an inclusive definition. As such, a legal fiction is created and the expression is deemed to include something, which it actually does not mean, when construed in a literal sense.
3. A definition in the form of 'to apply and to include' is an inclusive definition.

(6) Illustrations

1. Illustrations are examples appended to a section. Illustrations are inserted to clarify the scope and object of the section.

2. Illustrations are considered in constructing a neither curtail nor expand the ambit of the section. If there is a conflict between the section and illustration, the section will prevail.

(7) Proviso

1. The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment.

2. Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'proviso', 'Exception', or 'Saving Clause'.

- 'Exception' is intended to restrain the enacting clause to particular cases.
- 'Proviso' is used to remove special cases from general enactment and provide for them specially.
- 'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

(8) Explanation

1. An explanation is generally a clarification of the legislative mind. It explains the meaning of the words contained in the section.
2. Object of an explanation: The purpose of explanation is to
 - (a) include something within a section or to exclude something from it; or
 - (b) clarify any ambiguity in the main section; or
 - (c) explain the meaning the section; or
 - (d) make the main section more meaningful and purposeful.

(9) Schedules

The Schedules form part of an Act. Therefore, they must be read together with the Act for all purposes of construction. However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there

appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail.

(10) Read the Statute as a Whole

It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.

(B) EXTERNAL AIDS OF INTERPRETATION:

(1) Historical setting:

The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.

(2) Consolidating Statutes & Previous Law :

The Preambles to many statutes contain expressions such as “An Act to consolidate” the previous law, etc. In such a case, the Courts may stick to the presumption that it is not intended to alter the law. They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.

(3) Usage :

Usage is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the language in a statute is doubtful, usage – how that language has been interpreted and acted upon over a long period – may determine its true meaning.

(4) Earlier & Later Acts and Analogous Acts:

Exposition of One Act by Language of Another :

The general principle is that where there are different statutes in ‘parimateria’ (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

(5) Dictionary Definitions :

- First we have to refer to the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.
- However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act.

(6) Use of Foreign Decisions:

Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

RULES OF INTERPRETATION/CONSTRUCTION OF DEEDS AND DOCUMENTS:

1. Find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document.
2. The same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.
3. Ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole.
4. It may also happen that there is a **conflict between two or more clauses** of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one. Similarly, if **one part of the document is in conflict with another part**, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.